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No. 86-1180

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

BERNICE RICHARD,

Petitioner,

– against –

JULIAN SHERRIER,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITIONER'S REPLY BRIEF

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The principal question at trial was: Where did Bernice Richard's money go?

The Fancy testimony on the original 60(b) motion established that Sherrier's testimony had been false as to his use of her very first $50,000 payment, at the outset of the "joint venture". Bank records showed that the $50,000 went immediately upon receipt, not to Sherrier's lawyer to be held in escrow as he had promised Mrs. Richard until he had arrived in Pakistan to view the collection, but went straight to a merchant bank to whom he

was in debt for several hundreds of thousands of dollars. This payment plus some part of her $127,000 loan stopped the seizure of Sherrier's apartment by the bank. (F-3 and supporting documents in Record on Appeal). Sherrier, it turned out, had as part of his very first "transaction" with his "new partner" in their "relationship of trust" *defrauded* her of $50,000. The forgery of invoices covering later payments by Mrs. Richard raised the plain inference that Sherrier's testimony was false as to those payments as well.

The forged exhibits had been obtained by plaintiff long after the alleged payments for the sculpture had been made (one of them also bearing a false notary seal procured in response to a request from his own lawyer for more documentation on the eve of trial). (*See* Record on Appeal below). These documents were offered by him at trial for the sole and express purpose of corroborating his testimony as to what he had done with the money.

When the fact of forgery of these documents was proven by clear and convincing proof Sherrier himself offered no explanation. He was not directed to testify at the hearing. He had not produced the witness in Pakistan (Bedar Shah) through whom he claimed to have obtained the forged Siddik documents (and who later denied it in his letters rogatory). Sherrier had explained Shah's absence from the original trial because of difficulties in obtaining a United States visa, but subsequent evidence established that Shah had frequently visited the United States with no difficulty, both before and after the trial. (*See* Record on Appeal below).

The District Court blocked petitioner's attempts to examine Sherrier and Sherrier refused to appear voluntarily, saying he had nothing to add to the testimony he had already given. Apart from the forged exhibits, there was *no other proof* of where the balance of Bernice Richard's money went except for Sherrier's testimony.

The peripheral material produced by Sherrier's counsel (described at pages 6-11 of the brief in opposition) dealt only with side issues. None went directly to the main point.

The key issue in the trial – the very heart of the case – was where the money went.

Sherrier's testimony as to the first $50,000 has been shown to be false.

Sherrier's "invoices" to support his expenditure of the balance have been shown to be forgeries.

These were at the very core of the plaintiff's case. Their introduction at trial made petitioner's own attempts to defend the case futile, as the trial judge underscored in his original opinion (564 F.Supp. at 456):

> Bernice by her skilled counsel has pointed out that the form of the transactions in Pakistan are unconfirmed by reliable documentation, that Julian had in the past bartered pieces, that the prices in particular for the Princely and Elongated Buddhas were stated to be different in amount at different times, and that it is entirely possible that the objects were acquired in a different fashion and time than as described by Julian, all of which is uncontrovertible. However, Julian's testimony as to the method of dealing in Pakistan was corroborated by Wolff, and *Julian's version of the transaction cannot be rejected solely on the basis of Bernice's hypothesis which fails, understandably, to be established by objective facts regardless of its logic.* Strictly as a matter of proof, even if Julian's testimony were to be disregarded in its entirety as untruthful, which it is not, *Bernice has not been able to establish what did happen in Pakistan.* (Emphasis added.)

Petitioner is not here asking for anything that is unfair or overreaching. She is asking for a new trial, where Sherrier will be obligated to tell his story again without the support of forged corroboration, and with additional new evidence supporting the conclusion that the money was not all spent for the four statues, as he claimed, but that a significant part was diverted

to purchases for his own account – in direct repudiation of the joint venture which the District Court found to exist after accepting Sherrier's evidence on these matters as true.

False testimony is fraud.

Forged exhibits are fraud.

When they are proven by clear and convincing proof, the trial process should start over again on a clean slate.

Dated: New York, New York
February 20, 1987

Respectfully submitted,

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